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# LETTER DATED 15 SEPTEMBER 1994 FROM THE SECRETARY-GENERAL ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I wish to bring to your attention the attached letter dated 2 September 1994 and enclosure, addressed to me by Mr. Tadeusz Mazowiecki, Special Rapporteur on the situation of human rights in the former Yugoslavia.

You might wish to bring this information to the attention of the members of the Security Council.

(Signed) Boutros BOUTROS-GHALI

Annex

Letter dated 2 September 1994 from the Special Rapporteur on the situation of human rights in the former Yugoslavia addressed to the Secretary-General

I have the honour of communicating to you the text of a letter I wrote to the Chairman of the Commission on Human Rights on 26 August 1994, in which I expressed my concern over the difficulties I have faced in my efforts to implement my mandate with regard to the human rights situation in the Federal Republic of Yugoslavia (Serbia and Montenegro). The letter also includes some remarks concerning the comments of the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) on my sixth periodic report (S/1994/265, annex).

I have requested the Chairman to distribute the letter to the members of the Commission on Human Rights. Since I believe that this matter is of relevance to the work of the Security Council, I would be most grateful if you could give favourable consideration to making it available to its members.

(Signed) Tadeusz MAZOWIECKI
Special Rapporteur on the situation of human rights in the former Yugoslavia

Enclosure

Letter dated 26 August 1994 from the Special Rapporteur on the situation of human rights in the former Yugoslavia addressed to the Chairman of the Commission on Human Rights

The Special Rapporteur has taken note of the comments of the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) (E/CN.4/Sub.2/45) on his sixth periodic report (E/CN.4/1994/110), distributed at the Subcommission on Prevention of Discrimination and Protection of Minorities, and wishes to take this opportunity of presenting his remarks on these comments to the members of the Commission on Human Rights. At the same time, the Special Rapporteur would like to draw the attention of the members of the Commission to the serious difficulties he has faced in his efforts to implement his mandate, owing to the uncooperative attitude of the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro). During the first half of this year, the Government has rejected all requests by the Special Rapporteur and the Centre for Human Rights to undertake missions to the Federal Republic of Yugoslavia (Serbia and Montenegro) in order to collect first-hand information and to investigate allegations of human rights abuses reported to have taken place in that country.

Thus, by letter dated 10 June 1994, the Special Rapporteur requested permission for two staff members of the Centre for Human Rights to visit the region of Sandjak in order to investigate recent allegations of human rights abuses in that area. To date the Government has not responded to this request. On 18 July 1994, the Special Rapporteur requested the Government to authorize a mission of two human rights officers to travel to the Federal Republic of Yugoslavia (Serbia and Montenegro) in August 1994. In its letter of 27 July 1994 the Government explained its decision to reject this request by referring to the work of the Special Rapporteur as "one-sided, full of prejudice and above all politicized".

The Special Rapporteur would also like to draw attention to the fact that his proposal to open a permanent field office in the Federal Republic of Yugoslavia (Serbia and Montenegro), similar to those currently operating in Zagreb, Sarajevo and Skopje, has met with a negative response from the Government. By letter of 11 March 1994 to the Government, the Director of the Centre for Human Rights proposed a meeting between representatives of the Centre and the Government to be held in Belgrade in order to discuss the possibilities of establishing such an office in Belgrade. By letter of 27 March 1994, the Government rejected this proposal by referring to General Assembly resolution 47/1, suspending the participation of the Federal Republic of Yugoslavia in the General Assembly. The Government stated that, since it could not, as a matter of principle, accept cooperation with international organizations on an unequal footing, it was not in a position to reply positively to the Centre's request.

Furthermore, by letter of 6 June 1994, Professor Manfred Nowak, member of the Working Group on Enforced and Involuntary Disappearances, requested authorization to carry out a mission to the Federal Republic of Yugoslavia (Serbia and Montenegro) with a view to meeting government officials and non-governmental organizations (NGOs) representing families and relatives of

missing persons. Notwithstanding the purely humanitarian nature of this mission, the Government decided to reject Mr. Nowak's request. In its response of 24 June 1994, the Government stated inter alia the following: "Allow me to inform you that, bearing in mind the present circumstances, and, above all, the mandate of your Working Group, as well as Mr. Mazowiecki's activities so far, that have been highly politically oriented, one-sided and not based on facts, the Government of the Federal Republic of Yugoslavia is not able to accept your visit to the Federal Republic of Yugoslavia."

Regrettably, by refusing permission to establish a field office in Belgrade and by rejecting the Special Rapporteur's requests to send missions on an ad hoc basis to the Federal Republic of Yugoslavia (Serbia and Montenegro), the Government has blocked the Special Rapporteur's attempts to gather first-hand information concerning the situation of human rights in that country. Thereby, the Government has deliberately obstructed the Special Rapporteur in his efforts to fulfil his mandate as defined in Commission on Human Rights resolutions 1994/72 and 1994/76.

The Special Rapporteur has also taken note of the comments of the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) on his sixth periodic report. The attention the Government has given to the report should be considered as a positive step towards a dialogue between the Government and the Special Rapporteur. Such a dialogue combines well with the tasks of the Special Rapporteur as defined by the Commission on Human Rights in its resolution 1994/72 and with his endeavour to open new channels of communication with the parties concerned. The Special Rapporteur is also convinced that a free and unprejudiced discussion is one of the absolute prerequisites for a lasting improvement of the situation of human rights in the former Yugoslavia.

It is therefore with regret that the Special Rapporteur notes the highly polemic and aggressive way in which the Government has chosen to comment on his sixth periodic report. Right from the outset the Government characterizes the Special Rapporteur's work as "tendentious", "one-sided" and "biased". The Special Rapporteur categorically rejects these unsubstantiated accusations, which cannot be seen as compatible with a sound and constructive dialogue.

Most of the questions raised by the Government in its comments on the sixth periodic report of the Special Rapporteur relate to the methodology employed by the Special Rapporteur and his assisting staff when carrying out their task of reporting on the human rights situation in the Federal Republic of Yugoslavia (Serbia and Montenegro). Accordingly, the Government does not hesitate to disqualify the sources providing the Special Rapporteur with information as biased. Furthermore, the Government appears to be of the opinion that the Special Rapporteur bases his reporting on unchecked information.

With regard to this criticism, the Special Rapporteur would like to note the following. Owing to the highly sensitive character of the information concerning alleged human rights abuses in the former Yugoslavia received by the Special Rapporteur, he has chosen to base his methods of work on the practice already established within the framework of other mandates dealing with country situations or thematic questions as established by the Commission on Human

Rights. Accordingly, in cases where the Special Rapporteur has had reason to fear that the naming of persons or locations related to alleged human rights violations might jeopardize the life and security of the persons concerned, he has deliberately chosen to protect their anonymity. However, in cases where the Special Rapporteur has deemed it appropriate and useful to give a more detailed account of the circumstances surrounding a particular human rights violation, he has not hesitated to do so.

For similar reasons the Special Rapporteur has also chosen not to make public the sources from which he receives information and allegations concerning human rights violations. The information on which the Special Rapporteur bases his reports originate from a wide range of sources including private individuals, local and international NGOs and international governmental organizations. The information provided by these sources is double-checked as a matter of routine and compared to other independent reports in order to find corroborating evidence of alleged human rights violations.

The Special Rapporteur categorically rejects the Government's assertion that he has not paid due attention to the situation of Serbs in other parts of the former Yugoslavia. The Special Rapporteur wishes to emphasize that he, as a matter of principle, devotes equal attention to all individuals, regardless of their ethnic background, whose human rights have been or are being violated within the territories covered by his mandate. Thus, the Special Rapporteur has in all of his reports described violations committed by and against all parties to the conflict in the former Yugoslavia.

In its comments the Government criticizes the Special Rapporteur for not using the official versions of place-names in his reports concerning the Federal Republic of Yugoslavia (Serbia and Montenegro). In this regard, the Special Rapporteur wishes to point out that the names of locations and regions which appear in his reports conform to the practice established and followed by the major international governmental organizations operating in the former Yugoslavia. With regard to the areas commonly known as Kosovo and Sandjak, it should further be noted that these names appear in the form used by the Commission on Human Rights in its resolutions 1994/72 and 1994/76 defining the mandate of the Special Rapporteur.

In its comment on paragraphs 122 and 123, concerning security of the person, the Government once more accuses the Special Rapporteur of basing his reports on unsubstantiated allegations. In this regard the Special Rapporteur would like to point out that he is in possession of reliable and detailed information concerning numerous cases of torture and severe ill-treatment reported to have occurred, particularly, but not exclusively, in the regions of Kosovo and Sandjak. For reasons stated above, the Special Rapporteur has chosen not to disclose the sources of this information. It should also be noted that the Special Rapporteur on the question of torture in his letter of 21 July 1994 provided the Government with a detailed list of numerous cases of torture and ill-treatment reported to have occurred in the Federal Republic of Yugoslavia. With regard to the Government's allegation that Mr. Zeljko Dzakula was arrested in the so-called "Republic of Serbian Krajina", the Special Rapporteur notes that this statement is in total contradiction with verified eyewitness accounts, according to which Mr. Dzakula was arrested in Belgrade.

With reference to the Government's arguments concerning public incitement to discrimination and hatred against minority groups, the Special Rapporteur wishes to quote article 20 of the International Covenant on Civil and Political Rights, 1/ according to which:

"1. All propaganda for war shall be prohibited by law.

"2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."

Moreover, the Human Rights Committee, in its general comment on article 20, adopted on 29 July 1983 at its nineteenth session, 2/ states that "In view of the nature of article 20, States parties are obliged to adopt the necessary legislative measures prohibiting the actions referred to therein.", and that "... paragraph 2 is directed against any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, whether such propaganda or advocacy has aims which are internal or external to the State concerned." From this it becomes clear that it is the unambiguous responsibility of the authorities of the Federal Republic of Yugoslavia (Serbia and Montenegro) to prevent and prohibit any such acts as referred to in article 20 above. In this regard the Special Rapporteur welcomes the fact that the programme "Iskre i varnice nedelje" is no longer broadcast.

With regard to questions concerning freedom of expression and the situation of the media in the Federal Republic of Yugoslavia (Serbia and Montenegro), the Special Rapporteur notes that these issues will be addressed in a separate forthcoming report. However, it is evident that some of the Government's comments cannot be left unanswered in this context. The Special Rapporteur welcomes the Government's explanation concerning the proposed law on the liberalization of Radio-TV Serbia. He also regrets that, owing to an editing error, the meaning of paragraph 126 has been distorted. Thus, the sentence in question should read as follows: "It does not appear either that the Government has the intention of adopting the draft law on the liberalization of Radio-TV Serbia, which was put before the Serbian legislature before it was dismissed by the President." Furthermore, the Special Rapporteur sees the initiative to amend the existing legislation as an encouraging step towards a greater independence of the public media.

The Government's assertion that "... the truth of the matter is that the military authorities of the Republica Srpska [the de facto authorities of the Serbian-controlled areas in Bosnia and Herzegovina] held only military detention camps to which representatives of international humanitarian organizations had free access", is a gross distortion of the truth. Ample evidence of the atrocities committed against civilian men, women, children and the elderly in camps held by the Bosnian Serbs has been gathered inter alia by the Commission of Experts established pursuant to Security Council resolution 780 (1992) and presented in its final report (S/1994/674).

Concerning conscientious objection to military service in the Federal Republic of Yugoslavia, the Special Rapporteur remains convinced that this should be seen a legitimate exercise of each individual's right to refuse

service in those units of the military forces which have been responsible for serious violations of human rights in Croatia and Bosnia and Herzegovina. Therefore, given the nature of the conflict in the former Yugoslavia and the fact that Yugoslav forces were involved in hostilities outside its borders during the period from 1991 to 1992, the Special Rapporteur is of the opinion that persons who have refused to serve in the armed forces have a just cause and should therefore not be regarded as deserters, but be treated as conscientious objectors.

The Government also characterizes as unsubstantiated the Special Rapporteur's conclusion that the situation of ethnic, religious and linguistic minorities in the Federal Republic of Yugoslavia continues to deteriorate. In this regard, the Special Rapporteur wishes to point out that these findings were based on information and corroborating reports received from reliable sources, describing numerous cases of harassment and discrimination of members of minorities. The fact that the majority of the persons who have found themselves obliged to leave the Federal Republic of Yugoslavia (Serbia and Montenegro) as refugees are non-Serbs lends even more credence to these reports.

Regarding the situation in Kosovo, the Government asserts that there have been no complaints by ethnic Albanians about harassment or unlawful criminal proceedings. In this context the Special Rapporteur wishes to draw attention to direct information from various sources, according to which many ethnic Albanians chose not to file complaints against e.g. members of the police forces, because of their distrust of the authorities. Irrespective of the reasons behind such behaviour, the Special Rapporteur notes that this reluctance to contact the authorities may contribute to the low number of filed complaints. With regard to the situation of persons detained in Kosovo, the Special Rapporteur has already taken note of the letter of 21 July 1994 sent by the Special Rapporteur on the question of torture to the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro), listing a large number of recently received allegations concerning cases of torture and severe ill-treatment reported to have occurred in that country. With regard to the Government's assertion that the President of the Pristina Regional Court never had the meeting mentioned in paragraph 140 of the report, the Special Rapporteur merely notes that this statement is in contradiction with information received from a reliable non-governmental source.

Concerning the situation of the 25 Muslims imprisoned in Novi Pazar and accused of causing a threat to the territorial integrity of the Federal Republic of Yugoslavia (Serbia and Montenegro), referred to in the Government's comments, the Special Rapporteur notes that these persons have reportedly been detained since 23 May 1993 and that court proceedings against the accused began on 31 January 1994, i.e. approximately 8 months after their arrest. The Special Rapporteur has also received alarming reports according to which these persons were subjected to severe ill-treatment, and that their trial was postponed for the fifth time on 29 July 1994. According to reports, 16 of the detained have recently ended a hunger strike, which began on 1 August 1994 as a protest against the delays in the court proceedings.

With regard to the situation of the persons referred to above and of others detained for similar reasons, the Special Rapporteur wishes to emphasize, that

as much as it is the right of a State to investigate charges against its citizens, it is also its duty to respect their integrity and their fundamental human rights, including the right to a fair trial without undue delay and the right not to be subjected to torture, cruel, inhuman or degrading treatment in detention.

Concerning the situation in Vojvodina, the Special Rapporteur would like to emphasize that, regardless of the cause of the violence in the province, it is always the responsibility of the authorities to prevent, investigate and punish such criminal acts. In this regard the Special Rapporteur welcomes the cooperation established between the Hungarian authorities and the authorities of the Federal Republic of Yugoslavia (Serbia and Montenegro).

The comments provided by the Bosnian Serb de facto authorities will be addressed in a later report. However, the Special Rapporteur would like to stress that the collection of reliable information concerning the human rights situation in these regions has become increasingly problematic owing to the difficulties in gaining access to the Serb-controlled areas in Bosnia and Herzegovina. Lately, representatives of both international governmental organizations and NGOs have repeatedly been denied entry to the areas concerned.

Finally, it is the Special Rapporteur's hope that these remarks have brought some clarity to the questions raised by the Government in its comments on the Special Rapporteur's sixth periodic report. The Special Rapporteur firmly believes that only a constructive dialogue will ultimately contribute to the improvement of the human rights situation in the former Yugoslavia.

Signed) Tadeusz MAZOWIECKI
Special Rapporteur on the
situation of human rights
in the former Yugoslavia

Notes

1/ General Assembly resolution 2200 A (XXI), annex.

2/ Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 40 (A/38/40).

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